

1 sentence are stricken as irrelevant. The minutes of the  
2 meeting will speak for themselves.

3 MR. COHEN: Exactly, Your Honor. Turning now,  
4 Your Honor, to paragraph 76, and I direct your attention to  
5 the first line, "In fact, concerning NMTV my state of mind has  
6 never been anything except," continuing on to the word  
7 "Board." That's conclusory and has no relevance as a, as a  
8 fact, and it's -- this is part of the same pattern you've seen  
9 earlier of --

10 JUDGE CHACHKIN: I'll strike that sentence beginning  
11 with, "In fact," to "majority control the Board." That  
12 material will be stricken as conclusory.

13 MR. TOPEL: Your Honor, I understand you've ruled,  
14 but this statement, even on its face, is different than the  
15 ones where testimony was directly stated, that I know this is  
16 the case or that the Board is a minority controlled board.  
17 Here the witness is specifically saying this is what my state  
18 of mind was and so the testimony can't stand for the truth of  
19 the proposition beyond that it was her state of mind --

20 JUDGE CHACHKIN: That's irrelevant.

21 MR. TOPEL: -- and I think the state of mind is very  
22 relevant to whether there was an intent to abuse the  
23 Commission's processes or an intend -- intent to have an  
24 illegal de facto control.

25 JUDGE CHACHKIN: I don't see how she can have a

1 state of mind as to what legally -- what was legally  
2 constituted. She may have a state of mind as to some facts,  
3 but for her to make -- have a state of mind as to whether the  
4 legal control -- whether control existed or not is irrelevant.

5 MR. TOPEL: Your Honor, the state of mind also goes  
6 to the, the fact that they were separate corporations and, you  
7 know, I suppose, as long as the --

8 JUDGE CHACHKIN: I mean, you could have a state of  
9 mind and presumably you can -- state of mind could, could  
10 affect every issue in the case by just using the words "state  
11 of mind." I don't think this is a proper usage for her to a  
12 have such a state of mind. As far as I know she's not a  
13 lawyer, so I don't know where her state of mind derives from.  
14 She's made conclusions concerning that the Board of NMTV was  
15 minority controlled. She's even made conclusions about  
16 control involving TBN, control by a separate Board of  
17 Directors. I mean, one could stretch by using the term state  
18 of mind, I assume, into infinity, but I'm not going to permit  
19 this as evidence. We'll find out how much knowledge she has  
20 about the law and about all the facts and all the rest where  
21 there's a basis for her state of mind, not by just putting a  
22 conclusory sentence, so it's not going to come into the record  
23 under the aegis of state of mind, not in this courtroom. The  
24 entire sentence will be stricken.

25 MR. COHEN: Moving on, Your Honor, I now --

1 JUDGE CHACHKIN: So you have no objection to the  
2 remainder where she talks about the letters she wrote?

3 MR. COHEN: Correct.

4 JUDGE CHACHKIN: All right.

5 MR. COHEN: They're relevant facts, Your Honor.

6 Turning to page 52 --

7 JUDGE CHACHKIN: Which one?

8 MR. COHEN: Page 52.

9 JUDGE CHACHKIN: Page 52? All right.

10 MR. COHEN: I'm now on paragraph (a). I want to get  
11 focused if I can have a second, Your Honor. I object to the  
12 fifth sentence from the end of the paragraph beginning, "And I  
13 do not recall," on the grounds of competency. She doesn't  
14 recall whether she discussed it and she believes that she --  
15 that he understood and approved.

16 MR. TOPEL: We're at the -- above paragraph (b)?

17 MR. COHEN: Correct. 1, 2, 3, 4, 5 lines from the  
18 bottom. I object to that, to that language as -- on the  
19 grounds of competency, Your Honor.

20 JUDGE CHACHKIN: Which begins with, "I do not  
21 recall?"

22 MR. COHEN: Correct. Through "services."

23 JUDGE CHACHKIN: I will strike that.

24 MR. COHEN: And I object to the, to the last  
25 sentence in that paragraph on the grounds of competency

1 | because she clearly has no knowledge. She states she has no  
2 | knowledge. She's advised. That has no usefulness at a  
3 | hearing.

4 | JUDGE CHACHKIN: That sentence will also be  
5 | stricken.

6 | MR. COHEN: Next, Your Honor, I turn to page 53 and  
7 | the third -- 1, 2, fourth line from the bottom, "I have no  
8 | knowledge that any of these errors were intentional or  
9 | anything other than careless mistakes." That's -- I object to  
10 | that on the grounds of competency.

11 | MR. TOPEL: Where are you, Mr. Cohen?

12 | MR. COHEN: Page 53.

13 | MR. TOPEL: Okay. I need to -- I need a second to  
14 | review paragraph 52, but these are documents that she signed  
15 | so I don't see where this comes under the same objection that  
16 | she has no knowledge of them. These are documents that she  
17 | signed. She's testifying to her knowledge about them.

18 | JUDGE CHACHKIN: Well, then she's making a  
19 | statement, "I have no knowledge that any of these errors were  
20 | intentional or anything other than careless mistakes."

21 | MR. COHEN: That's a conclusion, Your Honor, that  
22 | you're going to have to reach on this record.

23 | JUDGE CHACHKIN: It seems to me we'll have to have  
24 | testimony of the persons who made these mistakes. I don't  
25 | know how she could testify to that. In fact, the minutes --

1           MR. TOPEL: Your Honor, as long as that there's not  
2 going to be an intention to argue that she did have knowledge  
3 and she is culpable for some intent, that -- that's fair  
4 enough.

5           JUDGE CHACHKIN: Look, we can't, we can't at this  
6 stage determine and know what questions are going to be asked  
7 on cross-examination. Obviously you'll have an opportunity on  
8 redirect to bring out matters which are brought out on cross-  
9 examination. The purpose of direct examination is not to  
10 anticipate everything that may possibly be asked on cross-  
11 examination.

12           MR. TOPEL: Well, Your Honor, it's not --

13           JUDGE CHACHKIN: That would in a sense be part of  
14 what's happened here.

15           MR. TOPEL: Well, it is, Your Honor, and, you know,  
16 that's true up front. But first thought is if the direct  
17 testimony is stricken, then I'm not -- you know, I question  
18 whether it will be appropriate for cross-examination. I  
19 suppose that that objection will occur at that time. But I do  
20 want to be very open with Your Honor that in trying to present  
21 our case what we did, rightly or wrongly and if it was wrong,  
22 I apologize, but what we tried to do was deal with several  
23 different matters. We tried to deal with what the Hearing  
24 Designation Order seemed to indicate concerning the  
25 Commission. We tried to deal with the matters that seemed to

1 concern the FCC's Mass Media Bureau during discovery so they  
2 could have the best explanation we could give of those  
3 matters. We tried to deal with the matters that seemed to be  
4 the greatest focus of Glendale's view of the relevance of the  
5 case and we tried to deal with our understanding of what the  
6 Commission law is on these issues to present the best case we  
7 can. And I apologize to Your Honor if we tried to do too  
8 much, but that is the foundation for the direct case that we  
9 submitted and this particular item relates to a matter that  
10 came up. I believe it was a matter that seemed to concern  
11 Glendale and, and it is intending to anticipate some of the  
12 issues so that you can have the fullest record presented in  
13 the most orderly fashion with perhaps less witness time, and I  
14 apologize, Your Honor, if that was a mistake to proceed that  
15 way.

16 JUDGE CHACHKIN: Well, I think it would create more  
17 witness time than less witness time. I think that's obviously  
18 going to be the result of this.

19 MR. TOPEL: Well, I apologize, Your Honor, but  
20 that's my -- I mean, that is what happened and your statement  
21 is correct, that a number of these matters were intended to  
22 address issues that came up that seemed to be relevant to  
23 other parties even though we might not think that they're  
24 relevant and Your Honor might not think that they're relevant.

25 JUDGE CHACHKIN: Well, I thought your only

1 obligation is to put in all the factual matters that you have  
2 relevant to the issues of control and abuse of process and not  
3 worry about what the other parties may ask on cross-  
4 examination since you'll have a full opportunity on redirect to  
5 go into any matters that are raised or to object on the  
6 grounds of relevancy if a question was improper.

7 MR. TOPEL: Well, Your Honor, I apologize and I've  
8 learned something, but I did -- your statement about the  
9 origin of this particular item and others is accurate and I  
10 want to be very up front and tell you that that is, in fact,  
11 the case.

12 JUDGE CHACHKIN: All right. I'm striking this  
13 sentence.

14 MR. TOPEL: Which sentence was that?

15 JUDGE CHACHKIN: "I have no knowledge that any of  
16 these errors were intentional or anything other than careless  
17 mistakes." Let the persons who have knowledge testify if they  
18 wish.

19 MR. COHEN: Your Honor, my next -- are you going to  
20 take a recess this morning?

21 JUDGE CHACHKIN: Yes. We can take one at this time  
22 and we'll recess now.

23 (Off the record.)

24 JUDGE CHACHKIN: Mr. Cohen, further objections?

25 MR. COHEN: Yes, Your Honor. We're on paragraph --

1 on page 54, Your Honor, subparagraph (d). I object to the  
2 entire paragraph except for the first sentence. I think the  
3 -- if you read that, the, the discussion about minority  
4 representation in the Wilmington/Philadelphia market, I submit  
5 to you is tangential and collateral at best to the designated  
6 control issues and abuse of process issue and I object on that  
7 basis.

8 JUDGE CHACHKIN: So what do you object to? What  
9 portion of the --

10 MR. COHEN: I have no objection to the first  
11 sentence.

12 MR. TOPEL: Your Honor, paragraph (d)?

13 JUDGE CHACHKIN: -- paragraph are you objecting to?

14 MR. TOPEL: "When we sold the Odessa station in  
15 1991," ending with the word, "'89, page 89-145." No objection  
16 to that if that's chronological, but I object to the rest.  
17 And if you'll review that you'll see, Your Honor, that all --  
18 this is really a discussion of the minority population in the  
19 Wilmington/Philadelphia market which I think is as I said.

20 JUDGE CHACHKIN: What does this have to do with  
21 control?

22 MR. TOPEL: Your Honor, this was intended, as I  
23 confessed before, to address a matter that I thought concerned  
24 the FCC's Mass Media Bureau and it relates to Mrs. Duff's  
25 philosophy and the decision of why to retain the Portland



1 station or sell the Odessa station, but I think it's under the  
2 umbrella. I -- it was directed to satisfy a concern that I  
3 thought the Mass Media Bureau had.

4 JUDGE CHACHKIN: All right. The material will be  
5 stricken. The only portion of subparagraph (d) that is  
6 received is the first sentence. The remainder of the  
7 paragraph is stricken.

8 MR. SCHONMAN: Your Honor, if I may, I'd like to go  
9 on record agreeing with Mr. Topel that, that the information  
10 in paragraph (d) is relevant because it, it -- I think it goes  
11 towards certain intentions that the company had and whether  
12 those intentions were, were essentially played out. I think  
13 you will hear testimony that the company, that is NMTV, had  
14 certain goals and intentions and what they did with those  
15 intentions I think are relevant to, to the control issue.

16 MR. COHEN: Your Honor?

17 JUDGE CHACHKIN: Yes.

18 MR. COHEN: I don't necessary agree with, with  
19 Mr. Schonman, but put that aside. This testimony has to stand  
20 on its own based on the designated issues and I don't think it  
21 does. And I think the test is that and if Mr. Topel offered  
22 evidence in anticipation, then that to me is a novel theory  
23 that I've never heard of. Why -- I've been doing this stuff  
24 for many years than I want to admit. I thought you offered  
25 evidence based upon the issues, not upon what you expected

1 | your opponents to seize upon.

2 |           MR. TOPEL: Well, Your Honor, if I could be heard  
3 | very briefly. The argument that Mr. Schonman made is the  
4 | argument that I have been making in terms of the minority  
5 | employment and hiring and this would be -- would come in under  
6 | the same argument that the applicant's intent to become a  
7 | strong minority company and strong markets and the reasons for  
8 | decisions as demonstrating and argue the bonafities of the  
9 | use of the Commission's process, but I'm not sure which  
10 | conclusion Mr. Schonman wants to draw from the evidence and  
11 | I'm not going to characterize that.

12 |           JUDGE CHACHKIN: Well, I'm going to strike the  
13 | material. If Mr. Schonman wants to -- believes that this is  
14 | relevant, if he asks questions and there's no objections we'll  
15 | see where we go from there, but at this time I fail to see how  
16 | it's relevant.

17 |           MR. SCHONMAN: Thank you, Your Honor.

18 |           MR. COHEN: Your Honor, turning to the next page,  
19 | line --

20 |           JUDGE CHACHKIN: Pardon me?

21 |           MR. COHEN: Nine lines from the bottom.

22 |           JUDGE CHACHKIN: (e)? Subparagraph (e) are we  
23 | talking about? Okay.

24 |           MR. COHEN: Yes, sir.

25 |           JUDGE CHACHKIN: Yes.

1 MR. COHEN: The sentence beginning, "Norman  
2 Juggert," ending with "religious organizations." I don't  
3 object to that if this is coming in for her state of mind.

4 MR. TOPEL: Mr. Cohen, I'm sorry. I don't know  
5 where we are.

6 JUDGE CHACHKIN: Page 56.

7 MR. TOPEL: Page 56. Oh, okay. May I have one  
8 second to read that?

9 JUDGE CHACHKIN: What line?

10 MR. COHEN: Nine lines from the bottom.

11 JUDGE CHACHKIN: Starting with Norman Juggert.

12 MR. COHEN: Through "religious organizations."

13 MR. TOPEL: Yeah. That -- I'll accede to that,  
14 Your Honor. That's what it's offered for.

15 JUDGE CHACHKIN: What is that? Beginning with  
16 "Norman Juggert?"

17 MR. TOPEL: Yes. It's pronounced Juggert,  
18 Your Honor.

19 JUDGE CHACHKIN: Juggert. Through a non-profit  
20 organization. That's being offered simply for state of mind?

21 MR. TOPEL: Yes.

22 MR. COHEN: Now, turning to paragraph 78, I have to  
23 give you some background, Your Honor, in order to make this  
24 objection intelligently. I don't know -- you only have a few  
25 papers on your desk so you probably have memorized this, but

1 we entered into a stipulation called Joint Exhibit 1,  
2 Your Honor.

3 JUDGE CHACHKIN: Yes.

4 MR. COHEN: And that was designed to simplify this  
5 proceeding, and Mr. Topel will correct me if I've misadvised  
6 you, but one of the witnesses who was about to be deposed who  
7 was noticed for deposition was an accountant, a CPA, for  
8 Trinity and for NMTV. And in order to make this evidence  
9 simple and make more sense it was agreed upon by all the  
10 parties that on a stipulated basis this accountant would study  
11 the records of -- the financial records of TBN and NMTV and  
12 develop certain facts which have come into the record on a  
13 stipulated basis. Among the matters -- and I'm trying now not  
14 to speak as an advocate. I'm trying to speak as a co-sponsor  
15 of a -- of the joint exhibit, Your Honor. Among the matters  
16 that were the subject of Mr. Morris' -- that's the gentleman's  
17 name -- Mr. Morris' assignment was to explain and report on  
18 certain accounting errors that apparently occurred on the  
19 books of NMTV and he did that. He did that to my satisfaction  
20 and to the satisfaction of the Bureau and obviously to the  
21 satisfaction of Mr. Topel, and that's in the record now. And  
22 I don't propose to ask any questions about it because it's  
23 very, very complex. Now, the vice in -- and I apologize for  
24 the speech, Your Honor, but the vice in paragraph 78 is that  
25 the witness has no personal knowledge whatsoever, as is clear

1 in paragraph 78, about the errors that Mr. Morris found and  
2 you can see that it's stated here she understands that his  
3 report, she understands is used a couple of times, so she has  
4 no personal knowledge. She's obviously not competent. I'm  
5 not going to ask the witness any questions about a matter  
6 about which she has no competency and I think it's not  
7 appropriate to put in this record testimony from this witness  
8 when she's simply not competent and her own testimony reflects  
9 she's not competent to testify about these accounting errors,  
10 and for that reason I object to paragraph 78.

11 MR. TOPEL: Your Honor, may I be heard?

12 JUDGE CHACHKIN: Yes.

13 MR. TOPEL: This may be one of the only moments in  
14 the next two weeks that Mr. Cohen and I have a good measure of  
15 agreement. Let me elaborate on Mr. Cohen's description of the  
16 events, however. One of the matters that we were assigned to  
17 do in the stipulation was to indicate what the various  
18 principles of the applicant knew about these accounting errors  
19 and we indicated to Mr. Cohen that with respect to Mrs. Duff  
20 and Dr. Crouch we felt that it was inappropriate for  
21 Mr. Morris to testify and prepare a stipulation about what  
22 they knew or didn't know and, and that we were going to put  
23 that in their direct testimony which Mr. Cohen, to my  
24 recollection, indicated was satisfactory. So that the reason  
25 that this is included in this testimony is to fulfill the

1 | agreement of the stipulation we made. The stipulation with  
2 | respect to Mr. Morris contains a proviso that, although the  
3 | parties will agree to put it into evidence, no one has waived  
4 | any rights to address the relevance of the matter. And,  
5 | frankly, Your Honor, the only item about this whole tax error  
6 | matter that's relevant to this case is Mrs. Duff's testimony  
7 | in paragraph 85 that it had nothing to do with applications  
8 | that were filed with the FCC or certifications that were made.  
9 | So I have no problem whatsoever if, if this is stricken with  
10 | that one exception, but I want to make clear that -- I don't  
11 | want Mr. Cohen to then contend that we had a default on our  
12 | stipulation and didn't provide what we promised to provide  
13 | because this is what he asked for, so that's our agreement.

14 |           MR. COHEN: Your Honor, I don't want to get into a  
15 | --

16 |           JUDGE CHACHKIN: I don't think we need to. I'm sure  
17 | what Mr. Cohen was saying, someone had knowledge about the  
18 | matter, they could provide testimony.

19 |           JUDGE CHACHKIN: Exactly.

20 |           JUDGE CHACHKIN: It's obvious she has no knowledge.

21 |           MR. TOPEL: Well, that --

22 |           JUDGE CHACHKIN: And all she was stating here she  
23 | understands from what -- whoever told her these things and so  
24 | it doesn't belong in her direct examination if she has no  
25 | knowledge.

1 MR. COHEN: That's all I'm saying.

2 JUDGE CHACHKIN: I mean, let the persons who have  
3 knowledge testify. She can't testify to an understanding from  
4 others.

5 MR. TOPEL: Well, Your Honor, with all due respect,  
6 we were specifically asked to indicate when the principles  
7 first learned of these matters and what they knew about them.

8 JUDGE CHACHKIN: Well, why didn't you say here?  
9 There's nothing here which says anything when she learned of  
10 these matters.

11 MR. TOPEL: It --

12 JUDGE CHACHKIN: Where is there anything in this  
13 paragraph saying when she learned of these matters?

14 MR. TOPEL: Paragraph 78, "During discovery in this  
15 proceeding I was advised by counsel that errors existed and  
16 Scott Morris went out and investigated it and based on his  
17 investigation that's when I learned about it and I had no  
18 knowledge of it before that."

19 MR. COHEN: Your Honor, I never --

20 MR. TOPEL: I'm not trying to -- I'm just trying to  
21 give Mr. Cohen what he asked for.

22 MR. SCHONMAN: Your Honor, may be Bureau be heard on  
23 this?

24 JUDGE CHACHKIN: Yes.

25 MR. COHEN: I never asked -- and I think this is

1 | unfortunate that we have to get into this, but I guess we do.  
2 | I never asked MR. Topel to put this material in his direct  
3 | case. I never asked him to do that and I don't think it's  
4 | fair to suggest to the judge that I did ask you to do this.  
5 | What I wanted to know is what the facts were and you've given  
6 | me -- we -- and we've agreed upon that joint stipulation and,  
7 | to me -- and that went into evidence and, and that's the end  
8 | of it. What, what inferences I want to draw from that or you  
9 | want to draw from that are another matter. I -- and Mr. Shook  
10 | is apparently not agreeing. I never asked Mr. Topel to put in  
11 | his direct case any facts concerning these matters. I asked  
12 | for -- whatever I asked for was to come into the joint exhibit  
13 | and that joint exhibit has been offered into evidence, and  
14 | that -- and I certainly didn't represent that to the judge at  
15 | the -- as an officer of the Commission.

16 |               MR. SCHONMAN: Your Honor?

17 |               JUDGE CHACHKIN: Let's hear Bureau counsel.

18 |               MR. SCHONMAN: Thank you. With respect to paragraph  
19 | 78, the Bureau believes that the first sentence should come in  
20 | because the first sentence is a statement of fact as to what  
21 | Mrs. Duff or did not know --

22 |               MR. COHEN: I agree.

23 |               MR. SCHONMAN: -- about, about the errors. Now,  
24 | beyond that, her ability to explain the errors is something  
25 | about which she has no competence. That's explained in the,



1 that's explained in the stipulation. That's my understanding.  
2 But that fact that she did not know about the errors up until  
3 fairly recently, that is a fact which the Bureau is relevant  
4 and should remain.

5 MR. COHEN: And I have no objection to that.

6 JUDGE CHACHKIN: So the first sentence will remain  
7 and the remainder of the paragraph is stricken.

8 MR. COHEN: I have no objection.

9 MR. MULLINS: Your Honor, may I speak to this  
10 because I was the instrument for preparing the declaration of  
11 MAS which is now Joint Exhibit No. 1. The criteria for  
12 preparing the stipulation and the declaration of MAS were  
13 contained in deposition transcripts and those transcript pages  
14 are cited on the stipulation itself. One of the requests was  
15 that the stipulation indicate when all officers of NMTV and  
16 all officers of Trinity knew about the errors and when,  
17 indeed, all attorneys knew about the errors.

18 JUDGE CHACHKIN: And doesn't the first sentence take  
19 care of all that?

20 MR. MULLINS: It may very well. I just want you to  
21 know something about the provenance of this, of this document.

22 JUDGE CHACHKIN: Yes, but -- so apparently the first  
23 sentence --

24 MR. MULLINS: We were told that there would be  
25 testimony from Mrs. Duff and Dr. Crouch as to when they

1 | learned about it.

2 | JUDGE CHACHKIN: And apparently there's no objection  
3 | to that.

4 | MR. MULLINS: All right.

5 | MR. COHEN: Your Honor?

6 | JUDGE CHACHKIN: The objection is her attempt to  
7 | explain what Mr. Morris did.

8 | MR. COHEN: That correct, Your Honor.

9 | MR. TOPEL: That's fine, Your Honor, but the  
10 | stipulation -- there were documents presented at discovery and  
11 | the request was made for us to make an investigation of who  
12 | knew what about those documents. And we did that to the best  
13 | of our ability and, and put it in the record as an  
14 | accommodation to Mr. Cohen to respond to his request. And I  
15 | had -- I know I spoke with Mr. Shook who was in communication  
16 | with Mr. Cohen that, that it was not appropriate for that --  
17 | for Dr. Crouch and Mrs. Duff's knowledge or lack of knowledge  
18 | about documents to be put in Mr. Morris' testimony, and I  
19 | believe this stipulation or this testimony complies with what  
20 | the parties agreed to do. But let me say -- I mean, I don't  
21 | think -- this would not be part of our case but for the fact,  
22 | but for the fact that the parties asked for it.

23 | JUDGE CHACHKIN: All right. Well, as was pointed  
24 | out, all that's necessary is a statement by each of the  
25 | principles that they weren't aware of the errors and that's

1 accomplished by the first sentence.

2 MR. COHEN: Exactly.

3 JUDGE CHACHKIN: Now, I don't know of any objection  
4 to the second sentence, who -- indicating who was commissioned  
5 to investigate these errors, if that's a problem.

6 MR. COHEN: I don't object to that.

7 JUDGE CHACHKIN: I will permit the second sentence  
8 --

9 MR. COHEN: I don't object to that.

10 JUDGE CHACHKIN: -- but from there on in it talks  
11 about her understanding of what the report shows.

12 MR. COHEN: That's my objection.

13 JUDGE CHACHKIN: And I assume the joint -- the  
14 stipulation deals with the report and what it shows.

15 MR. TOPEL: Correct.

16 JUDGE CHACHKIN: And her understanding is  
17 irrelevant.

18 MR. TOPEL: I agree. I mean, that's fine,  
19 Your Honor.

20 JUDGE CHACHKIN: But I don't know why we're spending  
21 all this time on it.

22 MR. TOPEL: Well, I was just responding to a request  
23 that other counsel asked, asked for.

24 JUDGE CHACHKIN: All right. So the first two  
25 sentences will be received. The remainder of paragraph 78 is

1 stricken as irrelevant.

2 MR. COHEN: Now, turning to paragraph 79, there's no  
3 foundation for the first sentence because she doesn't have any  
4 knowledge of what the accounting practice is. She's not  
5 competent because you've stricken, you've stricken that  
6 portion of Exhibit 78 which deals with her lack of knowledge.  
7 So the first sentence is incompetent.

8 JUDGE CHACHKIN: Her statement that she has no  
9 recollection?

10 MR. COHEN: Of the beginning of this accounting  
11 practice. What accounting practice? The accounting practice  
12 is one that she has no personal knowledge of.

13 MR. TOPEL: Well, that's because Mr. Cohen has just  
14 stricken the predicate of what, what she learned from  
15 Mr. Morris' report. And there is a reference to, to errors in  
16 the tax return that's still left in. I -- if Mr. Cohen wants  
17 to strike all of these paragraphs, then we'll go through them  
18 and there may be one or two lines that I'd like to argue  
19 about, but this was an accommodation to him, so I'm going --

20 JUDGE CHACHKIN: Well --

21 MR. SCHONMAN: Could I suggest a way to, to perhaps  
22 salvage the situation and, in order to accomplish that, could  
23 I just go off the record for about two minutes and --

24 JUDGE CHACHKIN: All right. We'll go off the  
25 record.

1 MR. SCHONMAN: -- we could have a discussion?

2 (Off the record.)

3 MR. TOPEL: I think we've solved all the problems.

4 JUDGE CHACHKIN: What's the solution.

5 MR. TOPEL: My learned colleague, Your Honor --

6 MR. SHOOK: We are about to enunciate the solution.

7 MR. COHEN: Your Honor, I'll do anything to get out  
8 of here faster.

9 JUDGE CHACHKIN: Well, we'll go back. We'll stay  
10 off the record.

11 MR. COHEN: We're off the record.

12 JUDGE CHACHKIN: We're off the record.

13 (Off the record.)

14 MR. TOPEL: Yes, Your Honor. TBN would withdraw its  
15 offer of paragraphs 79, 80, 81, 82, 83 and 84.

16 JUDGE CHACHKIN: All right.

17 MR. COHEN: Which ones?

18 MR. TOPEL: 79 through 84.

19 JUDGE CHACHKIN: All right. Any objection to 85?

20 MR. COHEN: Could I have a second, Your Honor, to  
21 get focused now?

22 JUDGE CHACHKIN: Yes.

23 MR. COHEN: Your Honor, 85 now has no foundation.

24 The accounting errors which are in the first sentence, there's  
25 -- the support for that is all gone.

1 MR. TOPEL: Yes, there is, Your Honor. The first  
2 sentence of paragraph 78, "During discovery I was advised that  
3 errors existed in the IRS filings and financial statements for  
4 the periods from 1980 to 1987."

5 MR. COHEN: There's still no --

6 MR. TOPEL: And then she say she has -- they have  
7 played no role in any submissions that were made to the FCC.

8 MR. COHEN: There's no foundation. This is a  
9 conclusion. Without, without some basis as to what the  
10 accounting errors are, this sentence has no, no probative  
11 value whatsoever.

12 JUDGE CHACHKIN: Well, my difficulty is she was not  
13 responsible for all of NMTV's submissions to the FCC.

14 MR. COHEN: And then that's another matter,  
15 Your Honor.

16 JUDGE CHACHKIN: She can make a statement I have  
17 played no role.

18 MR. TOPEL: Well, she signed many of them,  
19 Your Honor.

20 JUDGE CHACHKIN: But she didn't sign all of them.

21 MR. TOPEL: She didn't sign all of them.

22 JUDGE CHACHKIN: She played no role in all the  
23 submissions.

24 MR. COHEN: For example, she didn't sign the, she  
25 didn't sign the Odessa and the Portland NMTV applications

1 | which were applications for television stations for both  
2 | markets.

3 | JUDGE CHACHKIN: Well, I'm going to strike the first  
4 | sentence as unsupported. She's lacking foundation. The same  
5 | with the second sentence. Now, she can testify in those  
6 | instances where she made the submission, and I don't know what  
7 | they were, but they played no role in her determination, but  
8 | she can't testify about NMTV generally. She possessed the  
9 | knowledge --

10 | MR. TOPEL: And can -- would you accept conforming  
11 | the exhibit --

12 | JUDGE CHACHKIN: Would you object to that, that  
13 | played no role in her determination?

14 | MR. COHEN: Well, be specific, Your Honor. I mean,  
15 | I'm not telling you what -- I'm not --

16 | JUDGE CHACHKIN: Well, I want to hear how you want  
17 | to conform it.

18 | MR. COHEN: Okay. Well, the first sentence is  
19 | clearly objectionable, Your Honor --

20 | MR. TOPEL: Hold on, Mr. Cohen.

21 | JUDGE CHACHKIN: Well, let's hear it, what he has  
22 | -- what changes he wants to make.

23 | MR. TOPEL: After the word "applications" add the  
24 | words "in which I was involved, played -- no errors in  
25 | submissions in low power and full power applications in which

1 I was involved, of which I have knowledge."

2 MR. COHEN: I think that's much too broad. Involved

3 --

4 JUDGE CHACHKIN: What about "of which I have  
5 knowledge?"

6 MR. COHEN: Well, what about the one she signed  
7 herself, Your Honor? It seems to me what application she  
8 signed we're going to -- I'll assume she has knowledge. But I  
9 again have the problem, Your Honor, about referring to  
10 accounting errors when there's no foundation as to what the  
11 accounting errors were.

12 MR. TOPEL: Your Honor, as Mr. Cohen said, they're  
13 in the joint stipulation that he asked for. That was --  
14 that's what started this whole dialogue is --

15 MR. COHEN: No.

16 MR. TOPEL: -- that the, that the errors are  
17 described in the stipulation.

18 MR. COHEN: That's not the point. We're talking  
19 about the witness' knowledge here.

20 JUDGE CHACHKIN: I don't understand how she could  
21 say it played no role in the submission if she didn't have any  
22 knowledge that there was an accounting error. She's saying  
23 that the submissions -- the accounting errors made no  
24 difference in what was stated in the submissions or what?

25 MR. TOPEL: We weren't -- she wasn't -- no one was



1 thinking about these accounting errors. That had nothing to  
2 do with the state of mind in filing FCC applications.

3 JUDGE CHACHKIN: What's your position, Mr. Cohen?

4 MR. COHEN: Your Honor, and I'm not trying to be  
5 quarrelsome because I really would like to move on --

6 JUDGE CHACHKIN: I understand. What's your  
7 position?

8 MR. COHEN: -- but I submit to you respectfully that  
9 there's no -- no finding can be made about accounting errors  
10 when there's nothing in this witness' testimony to reflect her  
11 knowledge of the accounting errors. And to just refer to them  
12 as accounting errors is -- has no probative value whatsoever  
13 and Mr. Topel, for his own reasons, has stricken everything  
14 which deals with the accounting errors. He wants the best of  
15 all possible worlds. He wants to strike everything that deals  
16 with them and then he wants this conclusory type of sentence  
17 to come into the record, and that's -- there's no foundation  
18 for it.

19 JUDGE CHACHKIN: All right. I'm -- I don't see any  
20 purpose for the entire paragraph. I'm going to strike the  
21 entire paragraph.

22 MR. TOPEL: Your Honor, may I be heard? Certainly  
23 the state of mind, what the applicant was thinking when it was  
24 making submissions to the FCC, that's the, that's the core  
25 issue under the abuse of process issue. It's an issue, it's